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Supreme Court, U.S.
FILED
JUL 11 1994
OFFICE OF THE CLERK

No. 93-1975

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1993

ROBERT HADEN KING JR.,
Petitioner,

v.

NEIL BROWN, SUPERINTENDENT
OF THE CLALLAM BAY CORRECTIONS CENTER,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, THE ALABAMA CRIMINAL DEFENSE LAWYERS ASSOCIATION and the OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF THE PETITIONER

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27 pp

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ISSUE ADDRESSED BY THE AMICI CURIAE

May the strict time limits of the Interstate Agreement on Detainers be extended by the state's need to obtain a superseding indictment following the dismissal of an indictment which was unconstitutionally obtained?

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INTEREST OF THE AMICI CURIAE

The National Association of Criminal Defense Lawyers (NACDL) is a District of Columbia nonprofit corporation with a nationwide membership of more than 5,000 lawyers and 25,000 affiliate members. NACDL was founded over 25 years ago to promote the proper administration of the criminal justice system, the protection of individual rights, and the advancement of knowledge in the area of criminal defense law. After reviewing the record of this case, NACDL has concluded that it presents issues of such significance that NACDL should urge this Court to grant the Petition for a Writ of Certiorari.

The Alabama Criminal Defense Lawyers Association (ACDLA) is a nonprofit corporation with a membership of over 270 lawyers. ACDLA was founded in 1981. Among ACDLA's stated objectives are the protection of individual rights in criminal

cases and the promotion of the proper administration of criminal justice. The issues in this case are of such importance to criminal defense lawyers and criminal defendants throughout the nation that ACDLA believes it should offer its assistance to the Court.

The Oregon Criminal Defense Lawyers Association (OCDLA) is an Oregon non-profit corporation with a membership of more than 850 lawyers, legal workers, and law students throughout the State of Oregon. The purpose of the OCDLA is to provide and to promote scholarship in the area of legal representation in criminal, juvenile, and mental commitment proceedings; to promote public awareness as to the function and duties of the criminal defense bar; and to promote the integrity of the adversary system, as characterized by strongly independent and competent components of the judiciary and the bar.

Among OCDLA's stated objectives is the promotion of the proper administration of criminal justice.

Consequently, OCDLA concerns itself with the protection of individual rights and the improvement of the criminal law, its practices and procedures. The OCDLA believes strongly that the issues presented in this case must be addressed by this Court and offers its assistance in highlighting the particular need for clarification of the importance of the strict time limits contained in the Interstate Agreement on Detainers.[1]

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[1]Pursuant to Rule 37.2 of this Court, both the Petitioner and the Respondent have consented to the participation of the amici curiae, and letters of consent are being filed with the Court.

REASON FOR GRANTING THE WRIT

THIS CASE PRESENTS IMPORTANT ISSUES PERTAINING TO THE INTER-STATE AGREEMENT ON DETAINERS WHICH SHOULD BE ADDRESSED BY THE COURT.

On June 20, 1994, this Court issued its decision in the case of Reed v. Farley, No. 93-5418 (U.S. 1994). In the opinion written by Justice Ginsberg, in which Justices Rehnquist and O'Conner joined, the Court ruled narrowly that a state court's failure to observe the 120-day speedy trial provision contained in Article IV(c) of the Interstate Agreement on Detainers (IAD) is not cognizable under 28 U.S.C. § 2254 when the defendant made no objection to the trial date at the time that it was set. The Court did not resolve the question of whether the same rule would apply to a defendant who did in fact make a timely request based

on the IAD's speedy trial provisions.[2] Justice Ginsburg's opinion, and the concurrence authored by Justice Scalia, in many respects appears inconsistent with the intent of Congress and a number of prior decisions of this Court, which indicate that the speedy trial provisions of the IAD are essential to effectuate the underlying purpose of that Act.

The third question presented in the petition in this case, whether a superseding indictment may toll the IAD's speedy trial deadlines, turns on the extent to which the IAD's speedy trial provisions are in fact essential to the Act and must therefore be strictly enforced. Accordingly, this case provides the Court with an excellent opportunity to resolve

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[2]Justice Ginsburg concluded her opinion by stating that "we have reserved the question whether federal habeas review is available to check violations of the IAD's speedy trial prescriptions when the state court disregards timely pleas for their application." Slip op. at 16.

the tension between the language of Reed and the holdings of various earlier decisions of this Court and immediately to provide the lower courts with guidance on this important issue (see Petitioner's Supplemental Memorandum of Authority at 3). The amici submit this brief to emphasize the importance of this issue and to highlight the inconsistencies between the Ninth Circuit's holding and the holdings of numerous other courts.

The IAD's policy statement provides in pertinent part:

> The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditions and orderly disposition of such charges and determination of the proper status of any and

> all detainers based on untried indictments, informations, or complaints.

18 U.S.C. app. § 2. The courts which have carefully examined the origins of the IAD have concurred in the conclusion that it was drafted in response to a number of serious problems which arose out of an unregulated system of detainers used by states which had charges pending against prisoners held in other jurisdictions. This Court found in Carchman v. Nash, 473 U.S. 716, 720 (1984), for example, that the difficulties imposed upon prisoners by the lack of regulation of the use of detainers made some form of uniform legislation necessary:

> "The inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program. He often must be kept in close custody, which bars him from treatment such as trustyships, moderations of custody and opportunity for transfer to farms and work camps. In many jurisdictions he is not eligible for

> parole; there is little hope for his release after an optimum period of training and treatment, when he is ready for return to society with an excellent possibility that he will not offend again. Instead, he often becomes embittered with continued institutionalization and the objective of the correctional system is defeated." Council of State Governments, Suggested State Legislation, Program for 1957, p. 74 (1956).

Similarly, this Court stated in United States v. Mauro, 436 U.S. 340, 353 (1977), that when the IAD legislation was introduced in Congress, both the House and Senate Reports noted the compelling need for the legislation:

> "The Attorney General has advised the committee that a prisoner who has had a detainer lodged against him is seriously disadvantaged by such action. He is in custody and therefore in no position to seek witnesses or to preserve his defense. He must often be kept in close custody and is ineligible for desirable work assignments. What is more, when detainers are filed against a prisoner he sometimes loses interest in institutional opportunities because he must serve

> his sentence without knowing what additional sentences may lie before him, or when, if ever, he will be in a position to employ the education and skills he may be developing." H. R. Rep. No. 91-1018, p. 3 (1970); S. Rep. No. 91-1356, p. 3 (1970).

In addition to these significant problems created by the existence of a detainer lodged by another jurisdiction, a prisoner subject to a detainer was unduly prejudiced by the delay in preparing for trial on the charge for which the detainer had been lodged. As noted in United States v. Ford, 550 F.2d 732, 740 (2d Cir. 1977), as in all cases of trial delay, a prisoner under an indefinite detainer faced the prospect that witnesses might die, evidence disappear, and memories fade. While the state could gather its evidence and preserve it for an eventual trial, the prisoner--confined in another jurisdiction--was often unable

to do so, especially if he could not afford an attorney.

The abuses inherent in the unregulated use of detainers were well documented. Despite the many hardships suffered by prisoners subject to a detainer, as many as 50% of all detainers were allowed to lapse without any attempt at prosecution by the jurisdiction that had filed the detainer. Id. at 738 (citing Commissioner's Prefact to Uniform Mandatory Disposition of Detainers Act, 9B U.L.A. 363, 364 (1966)). The unfairness inherent in such a system eventually led to the recognition among the states that something had to be done to protect the speedy trial rights of prisoners subject to detainers.

These concerns resulted in the speedy trial provisions contained in the

IAD.[3] Article III of the IAD provides that a prisoner has the right to be brought to trial within 180 days after he requests final disposition of an indictment, information, or complaint for which a detainer has been lodged by another jurisdiction. In addition, Article IV sets forth a 120-day limit for the start of a trial once the prisoner has been transferred to the receiving state. Article V(c) provides unequivocally that the indictment on the basis of which the detainer has been lodged shall be dismissed with prejudice if the prisoner is

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[3]The Court noted in Carchman v. Nash, supra, that the legislative history of the adoption of the IAD by Congress in 1970 demonstrates that a motivating factor for congressional action was the need to vindicate a prisoner's constitutional right to a speedy trial, in conformity with this Court's ruling in Smith v. Hooey, 393 U.S. 374 (1969), which held that the sixth amendment entitles a prisoner in a federal penitentiary who is subject to pending state criminal charges to have the state, upon demand, make a diligent, good-faith effort to bring him to trial within a reasonable time.

not brought to trial within the 120-day period. The only tolling features in the IAD are contained in Article IV(c), which excepts adherence to the limitation periods as follows: "for good cause shown in open court . . . the court having jurisdiction of the matter may grant any necessary or reasonable continuance." The sanction of dismissal with prejudice clearly evidences congressional intent that IAD speedy trial violations are of the highest importance.

With this background in mind, the courts which have construed the speedy trial provisions of the IAD have consistently concluded that these provisions are for the protection of the prisoners and must be strictly construed to effectuate their purpose. For example, in Stroble v. Anderson, 587 F.2d 830 (6th Cir. 1978), which arose from a habeas proceeding, the court held that the dis-

trict court erred in finding that there had been "good cause" under Article IV(c) for the delay in the defendant's trial beyond the 120-day limit simply on the basis of the conclusion that the defendant was probably unable to stand trial. Rejecting the contention that there had been an informal agreement by the parties to postpone the defendant's murder trial because it was to follow closely another trial of the defendant, the court of appeals concluded that the tolling provision of the IAD could not be so easily invoked on behalf of the state:

> We believe that Art. VI was written as a protective measure for a transferred prisoner. It cannot appropriately be turned from a shield for the defendant into a sword for the prosecution.

Id. at 838. The court further emphasized that the IAD "was written with meticulous care" and that it was contemplated that a state's failure to adhere closely to its

provisions might have "harsh effects" on a state. Id. at 840.

Similarly, in United States v. Ford, supra, 550 F.2d at 741, the Second Circuit noted that any interpretation of the IAD should reflect Congress's purpose, as reflected by the legislative history, of providing a speedy disposition of trials by states which lodge detainers. In Ford, the court concluded that the defendant's rights under the IAD were violated, necessitating the reversal of his conviction, when he was not brought to trial within 120 days because of a delay caused by a congested court docket. See also United States v. Cephus, 937 F.2d 816 (2d Cir. 1991), cert. denied, 112 S. Ct. 884 (1992) (government cannot launch detainer against defendant and then throw out clock every time it dismisses charges, only to start clock anew by bringing new set of charges); Birdwell v.

Skeen, 983 F.2d 1332 (5th Cir. 1993) (a continuance which is granted to allow a party to ascertain whether testimony is necessary for a dismissal hearing is not based upon "good cause" when the party requesting the continuance could have made that determination prior to the hearing by using reasonable diligence); People v. C'Allah, 100 A.D.2d 754, 474 N.Y.S.2d 305 (1984) (state may not avoid operation of time limitations prescribed in the IAD simply by the expedient of procuring another indictment, whether it arises out of the discovery of new evidence or otherwise); State v. Shaw, 98 N.M. 580, 651 P.2d 115 (1982) (state may not avoid time limitations of IAD by filing second indictment).

A brief review of the facts in this case demonstrates that the Ninth Circuit decision simply cannot be squared with the principles and holdings of the cases

discussed above. King was transferred to Oregon pursuant to a detainer which was based on an indictment which was knowingly and fraudulently obtained in violation of the Oregon Constitution. This indictment was subsequently dismissed, leaving King in custody under a detainer for which there was no pending indictment[4] and causing Oregon authorities to seek and obtain--over the objection of King on IAD grounds--a 30-day continuance to permit another indictment to be returned. The granting of this continuance put the state beyond the 120-day limit set forth in Article IV of the IAD. The trial court found that this need to obtain a

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[4]In the absence of a valid indictment, the detainer which gave Oregon jurisdiction over King was a nullity, rendering his continued custody in Oregon violative of the IAD. See United States v. Glasgow, 790 F.2d 446 (6th Cir. 1985), cert. denied, 475 U.S. 1124 (1986) (the dismissal of a pending charge voids the detainer arising out of the charge).

second indictment was "good cause" for delay under Article IV(c).

As was held by the Fifth Circuit in Birdwell v. Skeen, supra, a "good cause" determination under Article IV(c) may not rest on a continuance request which itself was not reasonable. In this case, it is not questioned that the need for the continuance at issue could have been avoided by "reasonable diligence," 983 F.2d at 1340, as the very need for a superseding indictment was generated by the patently unreasonable action of the state in obtaining the original indictment in a knowingly illegal manner. Although the Ninth Circuit was comfortable with the finding that the first indictment was "technically defective," King v. Brown, 8 F.3d 1403, 1410 (9th Cir. 1993), and with the reasonableness of the state's need to get a continuance to permit reindictment, the amici submit that

permitting a state to evade the plain time limit requirements of the IAD, established for the protection of prisoners, solely for the purpose of allowing the state to correct its own manifestly unconstitutional action flies in the face of all that the IAD represents and is inconsistent with all of the decisions interpreting the IAD. The Ninth Circuit opinion thus has created a conflict with the other circuits and with state courts on this important federal issue which must be resolved by the Court.

In addressing this issue, the Court should recall the words of Justice Frankfurter in Malinski v. New York, 324 U.S. 401, 413-14 (1945), in which he emphasized the basis for the requirement that the laws be enforced in strict accordance with the procedures which they contain:

> "The safeguards of 'due process of law' and 'the equal protection of the laws' summarize the history of freedom of English-

> speaking peoples running back to Magna Carta and reflected in the constitutional development of our people. The history of American freedom is, in no small measure, the history of procedure."

(Emphasis added.) The history leading up to the enactment of the IAD reveals that the procedures contained in the legislation were created for the benefit of the prisoners affected by detainers, and not for the convenience of the prosecution, and were intended to be strictly followed. The Ninth Circuit's casual disregarding of this fact and its holding that the need to reindict King was good cause to extend the strict 120-day time limit for trial cannot be allowed to stand by this Court.

CONCLUSION

The Petition for a Writ of Certiorari filed by King offers the Court the opportunity to revisit and reconsider the

issue addressed in Reed v. Farley, supra, in a case in which a timely IAD speedy trial objection was made. Moreover, this case presents the chance for the Court to articulate more clearly the importance of the speedy trial protections offered by the IAD and, more specifically, to establish that a state's own knowingly illegal actions cannot constitute good cause to extend the speedy trial limitations. Accordingly, the amici urge the Court to grant the Petition for a Writ of Certiorari in this case.

Respectfully submitted,

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